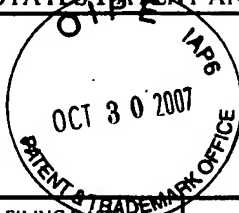




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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO.            |
|--|-------------|----------------------|---------------------------------|-----------------------------|
| 10/669,258   | 09/25/2003  | Robert O. Williams   | 10071-037-999                   | 3229                        |
| 20582  | 7590        | 10/05/2007           |                                 |                             |
| JONES DAY<br>222 East 41st Street<br>New York, NY 10017-6702 |             |                      | EXAMINER<br>ROYDS, LESLIE A     |                             |
|  |             |                      | ART UNIT<br>1614                | PAPER NUMBER                |
|  |             |                      | NOTIFICATION DATE<br>10/05/2007 | DELIVERY MODE<br>ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jpocket@jonesday.com  
japarker@jonesday.com  
wtokmakidis@jonesday.com

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| APPLICATION NO./<br>CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR /<br>PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
|---------------------------------|-------------|---|---------------------|
| 10/669,258                      | 9/25/2003   | WILLIAMS ET AL.                                   | 10071-037-999       |

JONES DAY  
222 East 41st Street  
New York, NY 10017-6702

**EXAMINER**

Leslie A. Royds

| ART UNIT | PAPER    |
|----------|----------|
| 1614     | 20070926 |

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents****NOTICE OF NON-RESPONSIVE AMENDMENT**

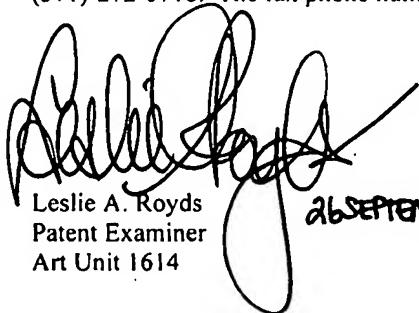
Applicant's response filed July 10, 2007 to the requirement for restriction/election dated January 10, 2007, has been received and entered into the present application. Applicant's election of the Invention of Group II (claims 24-40), directed to a method for treating pain comprising topically administering to the skin of a mammal in need thereof an emulsion comprising an antidepressant, an NMDA receptor antagonist, a lipophilic component, water and a surfactant, and the election of the species amitriptyline as the antidepressant, ketamine as the NMDA receptor antagonist, petrolatum as the lipophilic component, and PEG-100 as the surfactant, is acknowledged.

However, Applicant's election has not been made consistent with the instructions provided in the requirement for restriction/election of January 10, 2007 at pages 4-6. Election of any one of Groups I, II or III further required the election of a single disclosed species of antidepressant, NMDA receptor antagonist, lipophilic component and surfactant, as well as indicating whether the emulsion further contained a lipophilic penetration enhancer and/or humectant and/or an anti-foaming agent, and a single disclosed species of each, as appropriate.

Applicant has failed to elect and clearly set forth the indication of whether the emulsion further contains any one or more of a lipophilic penetration enhancer and/or humectant and/or anti-foaming agent, and a single disclosed species of each, as appropriate, to which examination on the merits will be restricted during the course of prosecution. The omission of this required portion of the election of species requirement is non-compliant and does not satisfy the requirements for election set forth in the previous Office Action of January 10, 2007. Applicant is advised that a proper reply to this notice will: (1) clearly set forth the group of invention to be examined (either (I) or (II) or (III)), (2) clearly set forth the species of antidepressant, NMDA receptor antagonist, lipophilic component and surfactant, (3) clearly set forth whether a lipophilic penetration enhancer and/or humectant and/or anti-foaming agent are components of the emulsion and (4) if a lipophilic penetration enhancer and/or humectant and/or anti-foaming agent are elected to be administered, the reply will clearly set forth the single disclosed species(s) for examination on the merits. A reply that fails to fulfill each and every one of these requirements will again be held non-compliant.


Since the above-mentioned response appears to be a bona fide attempt to reply, Applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction, as well as a proper response to the previous Office Action, in order to avoid abandonment. Extensions of this time period under 37 C.F.R. 1.136(a) are available.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Leslie A. Royds, whose telephone number is (571)-272-6096. The Examiner can normally be reached Monday through Friday, 9:00 AM to 5:30 PM. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ardin H. Marschel, can be reached on (571)-272-0718. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.



Leslie A. Royds  
Patent Examiner  
Art Unit 1614

26 SEPTEMBER 2007

  
ARDIN H. MARSCHEL  
SUPERVISORY PATENT EXAMINER